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In the Supreme Court of the United States

OCTOBER TERM, 1933

No. 325

INGER JULIANE HANSEN, PETITIONER

v.

EDWARD L. HAFF, ACTING COMMISSIONER OF IMMIGRATION for the Port of San Francisco

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

No opinion was rendered by the District Court. The majority (R. 37) and dissenting (R. 40) opinions in the Circuit Court of Appeals are reported in 65 F. (2d) 94.

JURISDICTION

The judgment sought to be reviewed was entered May 8, 1933 (R. 45). The petition for certiorari was filed on August 8, 1933. The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Petitioner states that there are two questions presented. We think there is only one and that it should be stated as follows:

Where the evidence before the Secretary of Labor shows that a resident alien woman has been engaged in repeated acts of illicit sexual intercourse with a certain man over a long period of time; that thereafter she accompanied him abroad, that she maintained her illicit relations with him on this trip, that for at least a part of the trip they traveled together as man and wife, and that when taken into custody on the day of her return to this country she was found occupying the same room with this man at a hotel where they were registered as man and wife, may the alien be deported as having entered the United States for an immoral purpose within the meaning of the immigration laws?

STATUTES INVOLVED

Section 3 of the Immigration Act of February 5, 1917, c. 29, 39 Stat. 874 (U.S.C., Title 8, Sec. 136), so far as pertinent, reads as follows:

> That the following classes of aliens shall be excluded from admission into the United States: * * * prostitutes, or persons coming into the United States for the purpose of prostitution or for any other immoral purpose; * * *.

Section 19 of that Act (U.S.C., Title 8, Sec. 155) reads in part as follows:

> That at any time within five years after entry, any alien who at the time of entry was a member of one or more of the classes excluded by law * * * shall, upon the warrant of the Secretary of Labor, be taken into custody and deported: * * *.

STATEMENT

Petitioner, an alien, was ordered deported, after a hearing, on the ground "that she entered the United States * * * for an immoral purpose" (Exhibit A, p. 55, on file with this Court).

The immigration file contains evidence (Exhibit A, pp. 3–11, 26–33) which shows that petitioner originally arrived in this country from Denmark in 1922. From that time until May 1931, with the exception of several trips abroad, she worked as a domestic servant and cook. In May 1931, accompanied by one Bolinger, a married man and an American citizen, she left Los Angeles for Europe. For approximately six years prior thereto Bolinger and the petitioner had engaged in repeated acts of sexual intercourse but did not live together. The greater part of the expenses of the trip to Europe were paid by Bolinger. On this trip the two continued their illicit relations, and during a part of the trip, at least, they traveled together as man and wife, petitioner being known as Mrs. Bolinger. They returned to this country on September 6, 1931, reentering at Seattle. Petitioner was admitted as a returning resident. On the night of

her arrival petitioner was taken into custody by the immigration authorities. At that time she was occupying a room with Bolinger in a Seattle hotel in which the two were registered as man and wife. At a preliminary hearing before the immigration authorities the petitioner admitted the previous illicit relations with Bolinger in Los Angeles and on the trip to Europe and said that she intended to continue such relations with him until they reached Los Angeles but that thereafter she did not intend to see him, "I might see him, but that is all." Bolinger also admitted their illicit relationship on the European trip (Ex. A, p. 12). At a subsequent hearing petitioner denied some of her prior admissions.[1]

To test the legality of the order of deportation petitioner filed in the United States District Court for the Northern District of California a petition for a writ of habeas corpus in which she contended, principally, that she should not be deported because "any intention she may have had to enter the United States [upon her return] for the purpose of having adulterous relations with a person of the United States was wholly incidental and immaterial to her purpose in returning to the United States to resume her residence therein and to resume her occupation as a domestic therein" (R. 1–8). An order to show cause was issued (R.

[1] For a more detailed statement of the facts, see the Findings and Decision of the Secretary of Labor (R. 11).

9), but, after a hearing (R. 19), the petition was denied (R. 20). Upon an appeal to the Circuit Court of Appeals for the Ninth Circuit, the judgment of the District Court was affirmed, one judge dissenting (R. 37–45).

ARGUMENT

In *United States* v. *Bitty,* 208 U.S. 393, this Court, in construing a provision of one of the earlier Immigration Acts punishing the importation of any alien woman for the purpose of prostitution "or for any other immoral purpose" held that one who had brought an alien woman into the United States for the purpose of having her live with him as his concubine was guilty of importing her for an immoral purpose. The Court said (pp. 402–403):

> It may be admitted that in accordance with the familiar rule of *ejusdem generis,* the immoral purpose referred to by the words "any other immoral purpose", must be one of the same general class or kind as the particular purpose of "prostitution" specified in the same clause of the statute. 2 Lewis' Sunderland Stat. Const., § 423, and authorities cited. But that rule cannot avail the accused in this case; for, the immoral purpose charged in the indictment is of the same general class or kind as the one that controls in the importation of an alien woman for the purpose strictly of prostitution. The prostitute may, in the popular

> sense, be more degraded in character than the concubine, but the latter none the less must be held to lead an immoral life, if any regard whatever be had to the views that are almost universally held in this country as to the relations which may rightfully, from the standpoint of morality, exist between man and woman in the matter of sexual intercourse. We must assume that, in using the words "or for any other immoral purpose", Congress had reference to the views commonly entertained among the people of the United States as to what is moral or immoral in the relations between man and woman in the matter of such intercourse. Those views may not be overlooked in determining questions involving the morality or immorality of sexual intercourse between particular persons. * * *

While it may be true that, technically speaking, petitioner might not properly be classified as a concubine prior to her European trip because she did not actually live with Bolinger, the evidence shows that during that trip the two cohabited together at least a part of the time as man and wife, and on the very night petitioner arrived in this country she and Bolinger registered at a hotel as man and wife and occupied the same room. In view of this evidence we do not believe that the Secretary was required to accept blindly petitioner's disavowal of any intention to continue in such relationship on

her return to Los Angeles. Cf. *Bauder* v. *Uhl,* 211 Fed. 628, 633 (C.C.A. 2d). It cannot be said, therefore, that there was no support in the evidence for the Secretary's finding that petitioner was a "concubine" as that word is defined by standard authorities (R. 16–17). It is, of course, well settled that a finding by the Secretary should not be disturbed so long as there is some evidence to support it. *Vajtauer* v. *Commissioner of Immigration,* 273 U.S. 103.

But even if it be assumed that the relationship between petitioner and Bolinger did not amount to concubinage, there is nothing in the statute which supports the view that a lesser degree of immoral relationship between the sexes does not fall within its purview, and petitioner cites no decision supporting any such position. In applying the statute, we must, as this Court said in the *Bitty case, supra,* assume that in using the words "or for any other immoral purpose," "Congress had reference to the views commonly entertained among the people of the United States as to what is moral or immoral in the relations between man and woman in the matter of [sexual] intercourse." By her own admission petitioner intended, until she reached Los Angeles, to continue the same type of illicit relationship with Bolinger as existed on their European trip, and we think it is a fair inference from the record despite petitioner's disavowal, if it may be called such, that she intended, after her

return to Los Angeles, that her relations with Bolinger should be at least as intimate as they had been before she went abroad. The only difference between such a relationship and the relationship of a concubine is in the matter of cohabitation. Petitioner may not have been a concubine because she did not live with Bolinger, but the immoral relationship was essentially the same. We submit that under any reasonable interpretation of the *ejusdem generis* rule a relationship of this kind must be considered as an "immoral purpose" within the meaning of the statute.

There is nothing in any of the cases relied upon by petitioner (Br., p. 7) that is contrary to our position. Most, if not all of them, proceed on the hypothesis that immoral conduct even less extensive than that of the petitioner would come within the purview of the statute. See also *Aplin* v. *United States,* 41 F. (2d) 495, 496 (C.C.A. 9th); *Coltabellotta* v. *United States,* 45 F. (2d) 117 (C.C.A. 2d), and *Ghadiali* v. *United States,* 17 F. (2d) 236, 237 (C.C.A. 9th), certiorari denied 274 U.S. 747.

Much of petitioner's brief is devoted to the contention that in order to come within the reach of the statute, the purpose which dominates and controls the alien in making the entry must be to engage in immoral practices. The assumption, of course, is that the evidence in this case is susceptible only of the interpretation that the immoral purpose was merely incidental to petitioner's de-

sire to return to her home and to resume her occupation as a domestic. While we think that the immigration authorities were entitled to draw a different conclusion from the evidence before them, the difficulty with petitioner's argument is that the only case upon which she relies that appears to lend any support to her position is a District Court decision, *Ex parte Rocha,* 30 F. (2d) 823 (S.D. Texas). Of course a conflict of this kind is not one which requires the granting of certiorari. The other cases cited by petitioner make it clear that it is sufficient if one of the purposes motivating the journey is the subsequent indulgence in immoral conduct. See also *Van Pelt* v. *United States,* 240 Fed. 346 (C.C.A. 4th); *Carey* v. *United States,* 265 Fed. 515, 517 (C.C.A. 8th); *Aplin* v. *United States, supra; Ghadiali* v. *United States, supra.*

CONCLUSION

The case was correctly decided below, and there exists no such conflict of decisions as requires the granting of certiorari. We respectfully submit that the petition for certiorari should be denied.

J. CRAWFORD BIGGS,
Solicitor General.
ANGUS D. MACLEAN,
Assistant Solicitor General.
HARRY S. RIDGELY,
W. MARVIN SMITH,
Attorneys.

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